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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 372

UNITED STATES OF AMERICA, PETITIONER

v.

THE CITY OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment entered in this case on May 27, 1949, by the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinions of the district court (R. 85-87, 97-105) is reported *sub nom. United States* v. *68,716 Square Feet of Land, etc.*, 79 F. Supp. 438. The opinion of the court of appeals (R. 109-111) is reported at 175 F. 2d 75.

JURISDICTION

The judgment of the court of appeals was entered on May 27, 1949 (R. 111). A petition for re-

hearing was denied on July 13, 1949 (R. 115). The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254(1).

QUESTION PRESENTED

In a proceeding to condemn property for temporary use, the district court upon petition by the Government entered an order declaring that under local law the property was exempt from taxation during the Government's temporary occupancy. The court below reversed with directions to dismiss the petition on the ground that the federal court should not have considered the matter, since the exemption from taxation was by no means clear under state court decisions. The question presented is whether the court below erred in directing dismissal of the Government's petition.

STATEMENT

In July 1943, the United States brought condemnation proceedings in the district court to acquire a leasehold interest in the Lebanon Hospital property, located in New York City (R. 23-30). The City was made a party to the proceedings and entered an appearance therein (R. 28, 48). The United States obtained immediate possession (R. 2, 39-43), and retained possession until January 1946, when its leasehold interest was duly terminated (R. 2, 63-66). Throughout its occupancy, the Government used the condemned property solely as a military hospital (R. 11-12, 97). Prior to the Government occupancy the hospital prop-

erty had been exempt from taxation (R. 2, 11, 12), but the City levied taxes on the property for the tax years 1944-1945 and 1945-1946, because of the Government occupancy (R. 2, 12).

In June 1945, prior to any trial on the issue of just compensation, the United States and the owning corporation entered into a stipulation by which the annual rental, without consideration of taxes, was fixed, and by which the United States agreed to pay as an element of just compensation any legally assessed taxes which should become a lien upon the property (R. 2, 13-15, 56-61). It was also agreed that the owning corporation would furnish complete cooperation in any proceedings which the Government might desire to be instituted to establish the nontaxable status of the property (R. 2, 14, 58). Judgment was entered upon the stipulation (R. 2, 13, 52-55). Upon the termination of the leasehold interest, the United States and the owning corporation entered into another stipulation, which in part declared that the United States was released from all liability for its use of the premises except for the matter of taxes (R. 68). Judgment was entered on this stipulation (R. 15-16, 63-66).

There having been no final adjudication in the condemnation proceeding (R. 98), the United States in May 1948 filed therein a petition for a declaration that the taxes assessed against the hospital during the Government's occupancy were in-

valid and that, therefore, full compensation had been paid for the Government's use of the property (R. 7-22). The City moved to dismiss the petition on the grounds that the court lacked jurisdiction of the subject matter and that the petition failed to state a claim upon which relief could be granted (R. 71-78). The district court denied the City's motion, wrote an opinion concluding that the property was exempt from taxation under the New York Tax Law, and entered an order declaring the taxes invalid and declaring that full and just compensation had been paid (R. 85-87, 97-105).

On May 27, 1949, the court below reversed, holding that, although the district court had jurisdiction, it should not have considered the matter, since the validity of the taxes was by no means clear under the state court decisions (R. 110-111). The court below considered it to be immaterial whether, because of delay, an adequate remedy was presently available in the state courts, being of the view that "the United States should never have sought relief in a federal court," and directed dismissal of the petition (R. 111). On July 13, 1949, the court below denied the Government's petition for rehearing (R. 115).

SPECIFICATION OF ERRORS TO BE URGED

The court of appeals erred:

1. In holding that the trial court should not have exercised jurisdiction.

2. In holding it to be immaterial whether or not there was presently an adequate remedy in the state courts.

3. In directing dismissal of the Government's petition.

REASONS FOR GRANTING THE WRIT

1. It is not entirely clear upon which of two possible grounds the court of appeals directed dismissal of the Government's petition. However, under the applicable decisions of this Court, the action below cannot be supported on either of the two grounds.

The court below recognized that the federal court had jurisdiction of the present controversy. It stated (R. 110): "However, the existence of jurisdiction is not enough. Whether the tax is valid is by no means clear under the state-court decisions. The question of the validity of a state or municipal tax is one which the state courts are peculiarly fitted to answer and which, therefore, a federal court should not consider. See *Matthews* v. *Rodgers*, 284 U.S. 521; *Stratton* v. *St. Louis, etc. Ry. Co.*, 284 U.S. 530; *Great Lakes & Dock Co.* v. *Huffman*, 319 U.S. 293; *Meredith* v. *Winter Haven*, 320 U.S. 228 at 235."

If by this statement the court below meant that the federal court could, and should, decline to exercise jurisdiction in the case because a doubtful issue of state law is presented, it clearly misinterpreted the decisions of this Court. In such situa-

tions, rather than declining to exercise their jurisdiction, the federal courts may simply postpone further proceedings in the case until state courts have indicated the proper solution of the question of state law. See *American Federation of Labor* v. *Watson,* 327 U.S. 582, 598-599, and cases cited; *Spector Motor Co.* v. *McLaughlin,* 323 U.S. 101, 105-106; *United States* v. *25.936 Acres of Land, etc.,* 153 F. 2d 277, 279 (C.A. 3); *Findley* v. *Odland,* 127 F. 2d 948, 951 (C.A. 6); *United States* v. *150.29 Acres of Land, etc., in Milwaukee C., Wis.,* 135 F. 2d 878, 881 (C.A. 7); *Green* v. *Phillips Petroleum Co.,* 119 F. 2d 466, 469 (C.A. 8), certiorari denied, 314 U.S. 637. Thus, in the *Spector* case the order of remand directed that the bill be retained pending the determination of state court proceedings. When the state law question has been decided, then the federal court can enter appropriate judgment in exercise of its jurisdiction. These authorities do not support the action of the court below in directing the trial court to dismiss the Government's petition, rather than simply postponing judgment until the state courts had spoken on the question of local law. We know of no decision authorizing a federal court to refuse to exercise the jurisdiction which a litigant is entitled to invoke, merely because an issue of state law is presented. Cf. *Meredith* v. *Winter Haven,* 320 U.S. 228, 235-236. On the contrary, in a case decided last Term, the Court

indicated that the presence of a doubtful question of state law does not oust federal jurisdiction. *Propper* v. *Clark,* 337 U.S. 472, 489-492.

The other possible interpretation of the opinion below is that equitable jurisdiction was lacking. The rule of the cases cited by the court below (R. 110) is that equitable relief will be refused only when there are available other plain, adequate, complete remedies. But the court below stated that "Whether, because of delay, that remedy is not now available is not material * * *." In *Hillsborough* v. *Cromwell,* 326 U.S. 620, 628, this Court made it clear that equitable relief is not to be denied simply because some other remedy was once available to the plaintiff. The decisive inquiry—ignored by the court below—is whether an adequate remedy in the state courts is *now* available. The decision below is thus squarely in conflict with the *Hillsborough* case. Certainly the equitable principle cited by the court of appeals cannot be applied so as to deprive a plaintiff in a federal suit of *all* remedy.

Moreover, it is at best questionable whether the state remedy can be said to be "complete." The opinion below treated the filing of the petition as a separate suit (R. 110). But this was not simply a proceeding to secure a declaratory judgment or injunction against enforcement of the state tax. It was an integral part of federal condemnation proceedings; the judgment of the trial court, which

the court below reversed, determined, *inter alia,* that just compensation had been paid (R. 87). Since such order must necessarily be entered in order to conclude the condemnation proceedings, the proceedings in the state court could, in no event, finally determine the matter.

2. The questions presented here are important. In the instant case it is not clear that there is now a remedy available in the state courts. Time for invoking the statutory tax certiorari procedure had expired before the filing of the Government's petition and even before the Government entered into the stipulation as to its payment of taxes as just compensation. New York City Charter, secs. 160, 163 and 166; New York Tax Law, sec. 290. And, although equitable remedies and a declaratory judgment action are apparently available (*Elmhurst Fire Co.* v. *City of New York,* 213 N.Y. 87, 91; *Dun & Bradstreet, Inc.* v. *City of New York,* 276 N.Y. 198, 206; *Richfield Oil Corp.* v. *Syracuse,* 287 N.Y. 234, 239), any such suit might be subject to the defense of laches. *Lewis* v. *Lockport,* 276 N.Y. 336, 344;[1] *Matter of Striker,* 23 Hun. 647,

[1] In the *Lewis* case the court stated (276 N. Y. at p. 343):

> In this very case there was a delay of six or seven years between the confirmation of the assessment and the institution of the action. Such a delayed attack, if successful, tends to disrupt budgets and tax plans. To prevent this, most statutes providing a method for obtaining relief from improper assessments or taxes, fix a limited period during which relief may be sought. * * * Where such a statute applies, one should not be permitted to sit by and, long afterward, come forward and ask a court of equity to relieve him from the tax.

affirmed, 85 N.Y. 629. Moreover, the decision below directing dismissal of the petition might well be given the effect of a decision on the merits preventing institution of any state court proceeding. New York Civil Practice Act, sec. 482; Rule 41(b), F.R.C.P. Similarly, if the state courts should decline to decide the issue on such ground or in the exercise of discretion in granting equitable relief, further invocation of the jurisdiction of the federal court might be barred for the same reason. It is thus quite possible that the decision below deprives the United States of all remedy, with the result that the amount it is compelled to pay exceeds just compensation.

But the importance of this case extends beyond its importance to the Government. It involves also the questions whether a federal court may refuse to exercise the jurisdiction vested in it simply because a question of state law is involved, and whether equitable relief may be refused because, at some time in the past, another remedy was available. The clarification of these questions is obviously required in order to prevent the possible loss of all remedies by other litigants.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1949.

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